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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/31/2005

James Guillet

1047-025

6278

34060

7590

12/19/2008

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EXAMINER

LIGHTFOOT, ELENA TSOY

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,966	Applicant(s) GUILLET ET AL.	
	Examiner Elena Tsoy Lightfoot	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,15-17,67-72,74-76 and 82-88 is/are pending in the application.
- 4a) Of the above claim(s) 1,15-17,67 and 68 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 69-72,74-76 and 82-88 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 69-72, 74-76, and 82-88 in the reply filed on October 30, 2008 is acknowledged. The traversal is on the ground(s) that each of independent claims 1, 67-70, and 85 recites "an internally crosslinked polymer comprising at least one hydrophobic substituent and at least one hydrophilic substituent." As recognized in Blum (US 6,180,562) does not teach expressly or inherently "an internally crosslinked polymer comprising at least one hydrophobic substituent and at least one hydrophilic substituent." This is not found persuasive for at least a reason that the Applicants' specification recites Blum (US 6,180,562) as example of their polymers (See P36-37 of Published Application) and a hydrolyzed fibrous protein selected from the group consisting of hydrolyzed *fibronectin* and hydrolyzed *elastin* (See P38 of Published Application), which (i.e. hydrolyzed fibrous protein selected from the group consisting of hydrolyzed *fibronectin* and hydrolyzed *elastin*) is also disclosed by Blum '562 (See column 3, lines 44-52). Therefore, the polymers of Blum '562 are also internally crosslinked.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1, 15-17, 67 and 68 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Examiner Note: claims 83 and 84 further limit water droplets recited in claim 70 not claim 69. Therefore, claims 83 and 84 were treated as depending on claim 70 not 69.

***Election of Species in National Stage Applications Submitted Under 35
U.S.C. 371***

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

(i) a composition comprising *an aqueous solution* comprising a dispersion of solid particles (Claims 69, 71-82);

(ii) a composition comprising *water droplets* comprising a dispersion of solid particles (Claims 70, 83-84);

(iii) a composition comprising *a foam* comprising an aqueous solution comprising a dispersion of solid particles (Claims 85-88).

Applicant is required, in reply to this action, to elect a **single** species (i.e. one of (i)-(iii)) to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy Lightfoot whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Friday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy Lightfoot, Ph.D.
Primary Examiner
Art Unit 1792

December 20, 2008

/Elena Tsoy Lightfoot/

In response to paragraph 1 of the Restriction Requirement, Group II, claims 69-72, 74-76, and 82-88 are elected. This election is made with traverse. Thus, contrary to the Restriction Requirement, independent claims 1, 67-70, and 85 are not anticipated or obvious in light of B[um], and therefore all of the claims share a single general inventive concept. Consequently, the Restriction Requirement is improper and should be withdrawn.

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-, 15-17, 67, 68, drawn to a method for coating a surface of a plant.

Group II, claims 69-72, 74-76, 82-88, drawn to a coating composition.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical feature for the following reasons: the special technical feature common to all the independent claims is a coating composition of claim 69-70 comprising solid particles comprising an internally crosslinked polymer having at least one hydrophobic substituent and at least one hydrophilic substituent, which is shown to be anticipated or obvious over Blum (US 6,180,562). Blum describes a coating composition comprising solid particles of a polymer having a relatively low amount of crosslinking (i.e. being internally crosslinked) because highly crosslinked polymers will release less heat upon encountering ambient temperature conditions at which frost and/or freeze protection is desired (See column 10, lines 37-42). The polymer is a hydrolyzed polyacrylonitrile comprising acrylic acid and acrylamide moieties (See column 3, lines 52-54), i.e. comprises at least one hydrophobic substituent and at least one hydrophilic substituent since the polymer of Applicants' invention is hydrolyzed polyacrylonitrile comprising acrylic acid and methacrylamide or isopropylacrylamide moieties. It should be noted that methacrylamide and isopropylacrylamide of Applicants' invention are similar to acrylamide of Blum except for methyl or isopropyl substituent instead of hydrogen. Thus, methacrylamide

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and isopropylacrylamide are homologues of acrylamide. Homologues are a class of compounds differing only by methylene linkages and possessing similar structures. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace acrylamide in Blum with homologues such as methacrylamide and isopropylacrylamide in view of their closely related structures and the resulting expectation of similar properties. Therefore, claimed polymer comprising at least one hydrophobic substituent and at least one hydrophilic substituent would be obvious over the polymer of Blum. For these reasons the unity does not exist between the groups of claims.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).